UNITED STATES
v.
GEORGE ERNSBARGER

IBLA 70-48 Decided October 29, 1970

Mining Claims: Contests -- Rules of Practice: Government Contests

A mining claim is properly declared null and void when the contestee failed to answer timely a Government contest complaint which charged that there had not been a valid discovery within the claim, and the complaint and regulations provide that failure to answer within 30 days will be taken as an admission of the allegations in the complaint.

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IBLA 70-48 : Contest Oregon 2355 (Wash.)

UNITED STATES	:	Mining claim declared
v.	:	null and void
GEORGE ERNSBARGER		
	:	Affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

George Ernsbarger has appealed to the Secretary of the Interior from a decision by the Chief, Branch of Mineral Appeals, Office of Appeals and Hearings, Bureau of Land Management (BLM), dated April 2, 1969, declaring his Chief George placer mining claim to be null and void. Appellant failed to file an answer to the Government contest complaint against the claim. The contest complaint was served on the contestee on February 1, 1968, as evidenced by the certified mail postal return receipt card signed by Ernsbarger. The complaint alleged that minerals had not been found within the claim in sufficient quantities to constitute a valid discovery, the land was nonmineral in character and requested that the mining claim be declared null and void. The complaint also stated that unless the contestee filed an answer in the land office in Portland within 30 days of service of the complaint, "the allegations of the complaint will be taken as admitted and the case will be decided without a hearing." The rules of practice of this Department governing contest proceedings are to the same effect, 43 CFR 1852.1-6, 1852.1-7(a) and 1852.2-2.

Appellant discusses at some length his inventions, contributions to this country and some of his life history. Though commendable and interesting, these experiences cannot be considered as an answer to the complaint. He contends that the same complaint was answered in 1962 when representatives of the BLM, Forest Service and Oregon Highway Department visited the claims and he demonstrated his concentrating plant. He also denies that the decision is factually correct and insists that the claim is valid.

Although the record discloses that verified statements have been filed on this claim 1/ nothing discloses that there was ever any binding determination that the claim was valid. The fact that Governmental representatives visited the claim previously does not constitute such a determination nor does it preclude the bringing of contest proceedings based on subsequent investigations.

The governing fact in this case is that appellant did not file an answer within the time specified in the complaint and provided by the rules of practice. We are bound to follow these rules. McKay v. Wahlenmaier, 226 F. 2d 35 (D.C. Cir. 1955). Appellant's failure to comply with the rules abrogates the right to a hearing on the complaint. Therefore, the action of the Bureau was correct. United States v. Raymer Garnett et al., A-28545 (January 31, 1961), United States v. J. Hubert Smith, 67 I.D. 311 (1960), United States v. Harold H. Hunter, A-30872 (February 21, 1968), United States v. Willie Walker, IBLA 70-50 (September 27, 1970).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

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Francis Mayhue, Member

I concur: I concur:

_____ _____
Edward W. Stuebing, Member Martin Ritvo, Member

1/ Such statements would be filed where a proceeding under section 5 of the Surface Resources Act of July 23, 1955, 30 U.S.C. § 613 (1964) had been initiated. Such a proceeding would not preclude the Government from instituting a regular contest proceeding against the claim. See United States v. A. Speckert, 75 I.D. 367 (1968).

Anne Poindexter Lewis, Member, Dissenting

For the reasons stated below, George Ernsbarger should be granted a hearing.

Before the Government takes a property right from a private citizen because of his procedural omission, the Government should make every reasonable effort to inform that person of his rights and obligations.

In the present case, the appellant was sent a form complaint with a copy of certain regulations. In the complaint, the Government's case is stated briefly in a few typed-in words of technical meaning and at the end in small print in italics this statement appears:

> Unless contestee(s) files (file) an answer to the complaint in such office within thirty (30) days after service of this notice and complaint, the allegations of the complaint will be taken as admitted and the case will be decided without a hearing. Any answer should be filed in accordance with Title 43, Code of Federal Regulations, Part 1852.1 a copy of which is attached.

The appellant did not file the required answer. He has owned the mining claim here involved for 9 years and paid $1000 for it in 1961. Under the existing rules and regulations, he stands to lose it without a hearing.

The papers sent to Ernsbarger failed to warn him as a layman of the risks if he did not file a timely answer. The complaint should have stated in bold print in a prominent place that Ernsbarger would lose his mining claim if he did not reply within 30 days and state his position. Moreover, a personal letter should go with any complaint explaining in simple terms why the Government is taking its action and the result of the failure to file a timely reply.

Accordingly, as I feel that George Ernsbarger was not sufficiently alerted to the necessity of filing a timely answer, I would grant him a hearing on the merits.

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Anne Poindexter Lewis